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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

RE: Operator Service Company Petition for Limited Waiver in CC Docket No. 96-128

Dear Ms. Dortch:

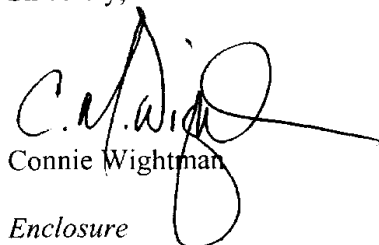
Enclosed for filing with the Commission on behalf of Operator Service Company is an original and four (4) copies of the PETITION FOR LIMITED WAIVER in CC Docket No. 96-128.

Please acknowledge receipt of this filing by returning, date-stamped, the extra copy of this cover letter in the self-addressed, stamped-envelope that is provided for this purpose.

Should you have any questions regarding this request, kindly address them to my attention at (407) 740-3002 or send an email to my attention at cwightman@tminc.com.

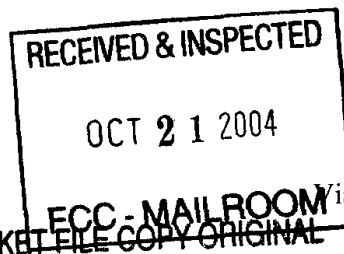
Thank you for your assistance in this matter.

Sincerely,


Connie Wightman

Enclosure

cc: Steven Ross, OSC
File: OSC - FCC



October 20, 2004
Via Overnight Delivery

No. of Copies rec'd 074
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
The Pay Telephone Reclassification)	CC Docket No. 96-128
and Compensation Provisions of the)	
Telecommunications Act of 1996)	

PETITION FOR WAIVER

Pursuant to section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") rules,¹ Operator Service Company (referred to herein as "OSC" or "Petitioner") requests a limited waiver of the Commission's pay telephone call tracking system audit requirements set forth in the Commission's *Payphone Audit and Order* and section 64.1320 of the Commission's rules, 47 C.F.R. §64.1320.² Specifically, OSC requests a partial waiver in order to be granted an extension - until January 1, 2005 - in which to complete the pay telephone system audit and file the System Audit Report with the Commission, pay telephone service providers ("PSPs"), and interexchange carriers ("IXCs"), as applicable. Good cause exists for granting this waiver.

I. BACKGROUND

On October 3, 2003, the Commission released the *Payphone Audit Report and Order*, which requires, *inter alia*, all completing carriers to undergo an audit of their pay telephone compensation tracking system by an independent third party auditor and to file the System Audit Report with the Commission, each PSP for which it completes calls, and each facilities-based

¹ 47 C.F.R. §1.3

² *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975 (2003) ("*Payphone Audit Report and Order*"); 47 C.F.R. § 64.1320(a)-(b).

long distance carrier from which it receives calls.³ On May 11, 2004, the Commission announced that its audit requirements would be effective July 1, 2004.⁴

With the exception of the audit requirement, OSC believes that it has all the processes and procedures in place to comply with the payphone tracking and compensation rules and that, once completed, the required audit will demonstrate such compliance. OSC believes that it lacks only the audit to be in full compliance.

In fact, prior to July 1, 2004, OSC was remitting its pay telephone compensation surcharges in essentially the same manner that is required after July 1, 2004. The differences being that prior to July 1, OSC remitted the call information and payments to its underlying carriers, and the remittance was made on a monthly basis, rather than quarterly, as is the requirement beginning July 1, 2004.

II. DISCUSSION

Pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Commission may waive any provision of its rules where "good cause" is shown.⁵ The Commission has concluded that good cause exists where "special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and waiver would be consistent with the principles underlying the rule."⁶ Indeed, the United States Court of Appeals for the D.C. Circuit has stated

³ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 18 FCC Rcd at 19975; 47 C.F.R. § 64.1320(a)-(b). In pertinent part, section 64.1320(a) states, "all Completing Carriers must undergo a system audit of their section 64.1310(a)(1) tracking system by an independent third party auditor." Section 64.1320(b) requires "each Completing Carrier (to) file an audit report from the auditor (the "System Audit Report") regarding the Completing Carrier's compliance with section 63.1310(a)(1) as of the date of the audit with the Commission's Secretary in CC Docket No. 96-128 and with each payphone service provider for which it completes calls and with each facilities-based long distance carrier from which it receives payphone calls."

⁴ *New Payphone Compensation Rules Will Go Into Effect on July 1, 2004*, Public Notice, DA 04-1309 (rel. May 11, 2004).

⁵ 47 C.F.R. § 1.3.

⁶ *1998 Biennial Regulatory Review - Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, *Ameritech Corporation Telephone Operating Companies' Continuing Property Record Audit, et. al.*, CC Docket No. 99-117, *GTE Telephone Operating Companies Release of Information Obtained During a Joint Audit*, AAD File No. 98-26, Further Notice of Proposed Rulemaking, FCC 00-119, at note 8 (rel. April 3, 2000) (citing *Northeast Cellular Tel. Co. V. FCC*, 897 F.2d 1164(D.C.

that granting a waiver may be appropriate if: (1) special circumstances support a finding that strict adherence would not be in the public interest; and (2) a grant waiver would not undermine the underlying policy objectives of the role in question.⁷ As explained below, good cause exists for granting the waiver requested herein.

OSC is confident that the processes and procedures it has used in the past and continues to have in place will insure that its data and payments are remitted on time and with proper documentation under the revised guidelines. Due to the unexpected difficulties in obtaining a timely contract for the third party audit, OSC is unable to satisfy the Commission's July 1, 2004, audit deadline. Furthermore, even though an outside independent auditor would conduct the audit, the audit process still requires substantial technical support, and given the timing, OSC has not been able to commit the resources necessary to complete the FCC-mandated audit by July 1, 2004.

OSC respectfully requests that the Commission grant it a limited waiver until January 1, 2005, in which to complete the initial system audit and to file the System Audit Report with the Commission, PSPs, and IXC's, as applicable. Special circumstances warrant an extension of time to OSC in which to conduct the audit. Granting a temporary waiver of the audit requirement is in the public interest and is consistent with the underlying policy objectives of the audit requirement.

A. Special Circumstances Warrant a Deviation from Audit Requirement

Special Circumstances warrant a deviation from the requirement that OSC complete the pay telephone tracking system audit and submit the System Audit Report to the Commission, PSPs, and IXC's, by July 1, 2004. These special circumstances are that the FCC Regulations were provided to our IT and Accounting Departments to verify that our procedures were still properly in place for payment to payphone providers as set forth by the new Regulations. These Regulations were given to our personnel to respond at a time when the company was involved in

Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (1969); *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983)).

⁷ *WAIT Radio*, 418 F.2d at 1157.

a corporate ownership change and, unfortunately, this verification was unintentionally and inadvertently overlooked while other pressing matters regarding the change of company ownership was going on. Moreover, and just as importantly, OSC's procedures have always accurately tracked calls to completion and adhered to established protocol to ensure that their software, personnel and/or network changes did not adversely affect their pay telephone tracking ability. OSC has always had procedures in place to incorporate call data into required reports and has always had in place adequate and effective business rules for implementing and paying pay telephone compensation. Significantly, although the audit is not yet complete, OSC has performed this effort to the satisfaction of LECs (including Qwest and SBC) and other pay telephone owners, even prior to the FCC change in which the originating facility based carrier was required to collect dial around payments. This is not something new or unique to OSC's business processes. During these times, OSC has not had any unresolved disputes concerning proper payments.

Furthermore, even if OSC could devote the necessary resources, the audit companies that it has contacted will not commit to completing the audit July 1, 2004. OSC has contacted several different auditing companies in an effort to satisfy the auditing requirement. Due to high volume of audits that they have been asked to conduct, and the fact that the auditing companies were unfamiliar with the requirements recently promulgated by the FCC, these companies have told OSC that they either cannot commit to completing the audit until the end of the year, or that they could not do it at all.

B. Granting OSC's Waiver is in the Public Interest

It is in the public interest to grant OSC's waiver request. In *WAIT Radio v. FCC*, the Court stated that considerations of "hardship, equity, or more effective implementation of overall policy, [are] considerations that an agency cannot realistically ignore."⁸ Requiring strict compliance with the July 1 deadline would cause unnecessary and undue hardship. By granting this Petition, the Commission will be acting in the public interest by encouraging business growth and efficiency, and the inevitable resulting benefits to consumers.

⁸ *WAIT Radio*, 418 F2d at 1159.

C. Granting a Waiver Is Consistent with the Policy Objectives Underlying the Audit Requirement

Essential resources were involved in a change in corporate ownership that prevented OSC from completing the audit required by the FCC. The FCC Regulations were provided to our IT and Accounting Departments to verify that our procedures were still properly in place for payment to pay telephone providers as set forth by the new Regulations. These Regulations were given to our personnel to respond at a time when the company was involved in a corporate ownership change and, unfortunately, this verification was unintentionally and inadvertently overlooked while other pressing matters regarding the change of company ownership was going on. Moreover, extending the initial audit deadline until January 1, 2005 will not have an adverse impact in any party. The unique circumstances surrounding its recent acquisition satisfy the Commission's waiver standards. As such, OSC respectfully request that the Commission extend the initial audit deadline six months, until January 1, 2005.

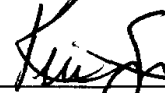
II. STATUS OF AUDIT

OSC requested a limited waiver of the Commission's rules solely to permit it sufficient time to complete the required audit. OSC has unable to devote sufficient internal resources, and unable to secure a third-party auditor in time to complete and file the required audit by July 1, 2004. As of this filing, OSC has been able to secure two quotes for its audit. OSC will retroactively establish through its audit that payments for compensable calls, beginning July 1, 2004, were made using its payphone tracking system in accordance with the Commission's rules.

III. CONCLUSION

For the foregoing reasons, OSC respectfully requests that the Commission grant this Petition for Waiver by extending its initial audit deadline until January 1, 2005.

Respectfully submitted,



Kirk Smith, President
5302 Avenue Q
Lubbock, Texas 79412
Telephone: (806) 747-2474
Facsimile: (806) 747-0757
E-mail: kirk.smith@osc.com


Dated: October , 2004

VERIFICATION

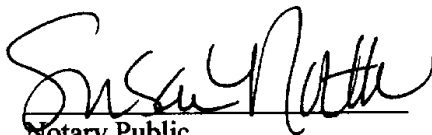
J. Kirk Smith, being duly sworn, states as follows:

1. I am the President of Operator Service Company located at 5302 Avenue Q, Lubbock, Texas 79412.
2. I am authorized to represent Operator Service Company and to make this Affidavit on its behalf.
3. I have read the foregoing Petition for Waiver, filed by Operator Service Company in CC Docket No. 96-128. The statements contained herein are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.
4. I declare under penalty of perjury that the foregoing is true and correct.

Further affiant sayeth not.

By: 
Name: J. Kirk Smith
Title: President
Date: 10/18/04

Subscribed and sworn to before
me this 18th day of October, 2004.


Notary Public

My commission expires: 10/3/06

